IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

VELJKO STANISIC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT

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Opinion Below

The opinion of the court of appeals (A. 61-75) is reported at 393 F. 2d 539.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petitioner's Brief.

Restatement of Question Presented

Whether an alien seaman with a valid landing permit is entitled to a full and formal hearing and ordinary deportation proceedings under Section 242 of the Immigration and Nationality Act on the issue of asylum to avoid persecution by reason of religion or political opinions when his landing permit is revoked because he in good faith sought asylum, and his ship has departed from these shores pending the final order on summary hearing and deportation proceedings under Section 252 (b) of the Immigration and Nationality Act.

Statutes and Regulations Involved

In addition to the Statutes and Regulations set forth in the Petitioner's Brief, the following should be added:

1. Excerpts from Yugoslav Laws (A. 47-58).
2. Protocol relating to the Status of Refugees, acceded to by the United States, Nov. 1, 1968 (Appendix, *infra,* pp. 31-37).
3. Convention Relating to the Status of Refugees dated July 28, 1951 (Appendix, *infra,* pp. 29-30).

Counter-Statement

The respondent, Veljko Stanisic, a native Yugoslav citizen, now aged 33 years, and married since 1967 to a citizen of the United States, arrived as a crewman at Coos Bay, Oregon on a Yugoslav flag vessel M/V Sumadija on or about December 23, 1964 (A. 10). He was given a landing permit as a D-1 crewman and came ashore and entered the

United States several times. On or about January 6, 1965 he presented himself with a relative to the Immigration Service at Portland, Oregon and in good faith sought asylum on the ground of persecution (A. 5, 10). His application was purportedly treated as a petition for parole under 8 C.F.R. 253.1(e). In the course of the interview Stanisic said he did not intend to return to the ship, and the District Director pursuant to the provisions of Section 252 (b) took him into custody as a mala fide seaman, and revoked his landing permit (A. 5, 7).

Stanisic had not had any opportunity yet to show his reasons and evidence of persecution. No lawyer had been consulted. He had acted in good faith expecting fair treatment.

The following morning his relative contacted Gerald Robinson, a Portland attorney with considerable experience in immigration matters. The affidavit of Gerald Robinson filed that day tells the story.[1] On such short notice the respondent's attorney refused to proceed with a hearing on the merits of the question of physical persecution, on the ground that no adequate time for preparation and sum-

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[1] "That I am an attorney for the above named Petitioner; that I was retained about 11:00 o'clock A.M. on January 7, 1965 by Petitioner's friends and/or family; that I filed a formal appearance as attorney for Petitioner at the Immigration and Naturalization Service about Noon on that day; that I am advised by Respondent ALFRED A. URBANO that he intends to deport Petitioner to the SS SUMADIJA without the opportunity of a hearing and before Petitioner can consult privately with me as his attorney; that at about 3:00 o'clock P.M. on January 7, 1965, agents of the Immigration and Naturalization Service attempted to interrogate Petitioner before he had had a chance to consult with counsel and with only 15 minutes notice to counsel to be present at said interrogation; that I am informed and belief [sic] that unless Petitioner's request for a restraining order and injunctive relief is granted, Petitioner will be in danger of life and limb."

moning of witnesses and gathering of evidence from far and near had been given, and further that he was entitled to a hearing before a Special Inquiry Officer (hereafter designated SIO). An order denying parole was immediately entered by the District Director and ordering him removed to his vessel (A. 5-6).[2]

Respondent's counsel thereupon the same day applied to the United States District Court for the District of Oregon for an injunction and a hearing (A. 34). This was amended January 11, 1965 to include a request for a hearing under section 242 (b) (A. 6-9). On January 18, 1965 the court ordered the matter referred to the District Director for a hearing on the question of *physical* persecution (A. 9).[3] The following day, January 19, 1965, Stanisic did present evidence to the District Director.[4] And on January 26, 1965 the District Director denied Stanisic's application for parole on the ground he failed to establish *physical* persecution (A. 10-22). Stanisic then filed a Motion for Review by the Court because of expressed and open bias of the District Director (A. 23-25). The District Director moved for summary judgment, which the court granted on July 20, 1965 (A. 26-34).

The expulsion of Stanisic was stayed pending an application to Congress for a private bill. In the meantime the statute was changed on October 3, 1965 no longer to require

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[2] Ordinarily, and as argued by petitioner, this should have closed the case, and this should be the sum total of the procedure and constitutional protection which any D-1 crewman should expect at the hands of American authorities.

[3] On or about January 16, 1965 the respondent's ship left American waters for Italy. See note 4 on page 5 of Petitioner's brief.

[4] This testimony is part of the Record lodged with the Court. A summary thereof (Appendix, *infra*, pp. 21-28) is attached hereto for convenience.

physical persecution as a ground for asylum, but to allow in lieu thereof "persecution on account of race, religion, or political opinion".[5] When the Congressional bill was turned down in June 1966 the District Director on June 21, 1966 ordered Stanisic to appear about 70 hours later on June 24th for deportation to Yugoslavia by airplane. A petition for parole (A. 35-36) was filed June 22, 1966 requesting:

1. A stay of deportation to Yugoslavia on the basis of anticipated persecution on account of religious and political opinion, and on account of pending litigation in Lane County, Oregon;

2. A hearing before a Special Hearing [sic] Officer of the Immigration Service; and

3. In the alternative, in the event of denial of the petition, leave to depart voluntarily from the United States at his own expense.

This petition was denied by the District Director without hearing on the new issues (A. 36-38). The same day, June 23, 1966, Stanisic filed in the United States District Court for the District of Oregon a complaint, Case No. 66-333 (A. 38-44) seeking a restraining order and relief under section 243 (h) on the ground of persecution on account of *religion or political opinion,* and such other and further relief as might be appropriate. A hearing was held early the next morning and the court denied the relief sought on the ground of *res adjudicata* in Case No. 65-10 without considering the question presented to it (A. 44-45).

While the appeal was pending Stanisic filed on February 9, 1968 a motion requiring the United States to ascer-

[5] Act of Oct. 3, 1965 (79 Stat. 918).

tain through diplomatic representations details as to the charges that might be made against him if he be returned to Yugoslavia, the maximum punishment that might be inflicted, and guaranties that he would not be persecuted if returned to Yugoslavia or jailed there and that he would have humane treatment and access to legal counsel and family if returned to Yugoslavia. And Stanisic further moved that if ordered deported any deportation be suspended pending a receipt of a satisfactory answer and guaranties from the Yugoslav Government (A. 59-60). This motion was denied on April 17, 1968 (A. 61).

The same day the Court of Appeals reversed the decision of the District Court (A. 61-76). It ruled on a careful analysis of the statutes that, because the District Director's order of June 23, 1966, denying Stanisic's application for relief from deportation, had been entered after his ship had left American ports, expulsion under section 252 (b) was no longer authorized. The court then held that Stanisic could not thereafter be deported except in accordance with the detailed administrative procedure of section 242 (b).

SUMMARY OF ARGUMENT

Taken in context with a view to the purpose of the legislation, section 252(b) procedure is designed to provide a swift remedy while the crewman's ship is still in port; but when the ship leaves the need for haste ends. One is weighing the Constitution against the inconvenience to shipping. Where the claim of asylum is made in good faith prior to the revocation of his landing permit, a section 242(b) hearing before an impartial judicial officer should begin.

If, however, this statutory construction should fail, the guaranties of due process of law require that Stanisic be given a fair and impartial hearing with right of judicial review, something which has been denied to him so far on the question of asylum and persecution. There is no clear and convincing evidence warranting deportation or a denial of asylum. Thus, due process has been denied him.

In addition, treaty law binding on the United States gives protection to a refugee unwilling to return to his country because of well-founded fear of being persecuted for reasons of religion, membership in a particular social group, or political opinion. No refugee, including a crewman, can be compelled to go back to a country where he reasonably fears persecution.

In essence, this case is weighing due process of law against shipping, while at stake are a man's life and limb. With the emphasis on human rights, Stanisic is entitled to something better than he has received at the hands of the District Director. This entails a section 242 (b) hearing before an impartial judicial officer. Anything less is a denial of due process and of human rights.

ARGUMENT

I.

An analysis of the statute, as done in the opinion of the Court of Appeals (A. 61-75), shows that the purpose of section 252 (b) of the Immigration and Nationality Act is to provide "a specific remedy for a particular problem" when the crewman's ship is still in port, but "the justification for quick resolution of the problem departs with the vessel".

Petitioner admits (Brief, 20) that not all alien crewmen are subject to summary 252 (b) procedures, and these fall into several broad categories: (1) those crewmen who on landing are permitted to depart on another ship, (2) those who jump ship with no permit at all, (3) those whose ship sails before the landing permit is revoked. In all of these cases the alien crewman may be deported only in accordance with section 242 (b) procedures. This is so even though their defection or absence may have had adverse effects on the movement of vessels.

In its efforts to plug a loophole Congress provided that summary section 252 (b) procedures should be employed only if it can be done by returning the crewman to his own vessel or by arrangements made prior to departure of that vessel for deportation on another vessel. Section 254 (c) implements section 252 (b) but implies in any reasonable interpretation the continued presence of the vessel in the American port while the summary procedures are invoked. Haste is the keynote, lest shipping be delayed.

Yet, as the Court of Appeals pointed out, "the purpose of section [252 (b)] is palliative, not punitive. Its object

is to provide a specific remedy for a particular problem, not to deprive alien crewmen of rights available to others[8a] simply to punish them. If an alien crewman is denied the benefits of section [242] though the exigency justifying summary deportation has passed, great loss is inflicted on the crewman without purpose" (A. at 74-75). Most crewmen concede their deportability, but after their ship is gone they are still legally permitted under section 242 proceedings to depart voluntarily to a country of their own choice. Matter of *Vara-Rodriguez*, 10 I&N 113 (1962).

Petitioner argues (Brief 33-35) that the statutory construction given by the Court of Appeals would create a serious problem for foreign shipping. (American shipping, employing U.S. citizens as crewmen would not be affected.) But as pointed out in Stanisic's brief in opposition to the petition for writ of certiorari (pp. 7-9 thereof) the problem is *de minimis* statistically, and is far outweighed by the human values of life and limb involved and the world image of American justice and fair play.

Nothing is gained, except punishment, by haste under section 252 (b) after the ship has left American waters. As in the case at bar, extreme injustice can be done by failing to give the crewman a hearing before an impartial officer of his claim of persecution.

By reading the two procedures in context and in light of the facts of this case, Congress cannot have intended and did not contemplate such an inequitable result.

The Supreme Court, addressing itself to statutory construction in an immigration case even involving fraud laid

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[8a] Such as the three categories of crewmen falling under section 242 (b), *supra*.

down in *Immigration Service* v. *Errico*, 385 U.S. 214, 87 S. Ct. 473, 17 L. ed. 2d 318 (1966), the following rule

> "Even if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien. As this Court has held, even where a punitive section is being construed:
>
> "'We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. . . . It is the forfeiture of misconduct of a residence in this country. Such forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used. . . .'"

The statutory scheme must never lose sight of the humanitarian goal, regardless of how the alien came to these shores. This is woven into the Constitution.

The weakness of a summary section 252 (b) hearing before a District Director who is arresting officer, judge and jury and executing officer is shown in this case where the District Director claimed he was proceeding under 8 C.F.R. 253.1.(e)[*] addressed to his discretion to ascertain "fear of persecution—on account of race, religion, or political opinion" (A. 5-6), but ended considering only "*physical* persecution" (A. 10-22), the term used in section 243 (b) prior to its amendment later in 1965. Physical persecution was and is the basis on which the Government

[*] For provisions, see petitioner's brief, p. 46.

seeks to deport Stanisic. *Vucinic* v. *United States Immigration and Naturalization Service*, 243 F. Supp. 113 (D. Ore. 1965).

When, therefore, the ship is gone the summary and hurried section 252 (b) procedures should be dropped[7] and the more careful and impartial hearing before a SIO (a judicial officer) should be begun. Especially is this true where the crewman in good faith applies prior to the revocation of his landing permit and claims asylum.

II.

The Constitution of the United States, and particularly the Fifth Amendment requiring due process of law, require clear and convincing evidence to support an administrative decision and ultimately compel judicial review of any arbitrary or capricious decision.

Broader and more fundamental than the dispute over statutory construction is the question whether the Constitution (Fifth Amendment) and its guaranties of due process of law have any bearing on the decision of this case.

A man's life and limb are at stake, not to mention a probable disproportionate prison term in the alternative (see pp. 17-18, *infra*). Stanisic had been threatened with and promised life imprisonment if he attempted to leave Yugoslav jurisdiction again after his unsuccessful flight in 1957 (A. 13). These were the matters to be considered together with corroborating evidence of persecution of his family, 30 of whom had been killed as anti-Communists and Chetniks. The District Director on January 7, 1965, acting as prosecutor, judge, jury and executing officer de-

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[7] In the Stanisic case only a few minutes were involved.

manded that Stanisic prove his case on a few hours' notice, and when the crewman obtained legal counsel he had not had more than a few minutes to consult with his attorney. This would have constituted the full course of the summary procedure which the petitioner seeks to sustain.

When Stanisic sought the intervention of the District Court a further hearing was again ordered solely on the question of *physical* persecution, but still before the District Director against whom charges of bias and prejudice were subsequently pressed unsuccessfully. The evidence (summarized in the Appendix hereto, pp. 21-29) was offset by nothing except the District Director's official notice of a relaxed political climate in Yugoslavia (A. 21-22). That this "official notice" was unwarranted is shown by the imprisonment of a university lecturer for urging a multiparty system within the Communist framework (see excerpt from The Oregonian, September 24, 1966, in the Appendix hereto, p. 38), while the former Communist vice-president of Yugoslavia, Milovan Djilas, languishes in prison for his exposure of the Communist bureaucracy in Yugoslavia. Shortly afterward the Yugoslav embassies and consulates were bombed simultaneously in the United States and Canada. In the face of such events "official notice" amounts to nothing of evidentiary value. In *Radic* v. *Fullilove,* 198 F. Supp. 162 (DC ND Calif. ND, 1961) in its footnote at 164, the court said:

> ". . . In this case, the Hearing Examiner has weighed Radic's life against nothing (so far as the record shows), and amazingly has found that the latter outweighs the former."

As in the *Radic* case, secret evidence from the file of the Immigration and Naturalization Service was considered

in camera (A. 29) without the right of Stanisic or his counsel to examine or refute it. In the *Radic* case at page 165 the court went on to say:

> ". . . it is patent that plaintiff has not been afforded procedural due process here. Under our form of Government, the right to a hearing embraces not only the right to present evidence in support of one's position, but also a reasonable opportunity to know the claims of the opposing party with the privilege of seeking to refute those claims. . . ."

Thus, in the administrative hearing which the petitioner claims is all that Stanisic is entitled to, we have:

1. A hastily ordered hearing before a District Director on a serious question of persecution.
2. A hearing 12 days later at which hurriedly gathered witnesses testified strongly on behalf of Stanisic and his crewmate, Vucinic. No evidence was introduced on behalf of the Government or to sustain its position.
3. "Official notice" strongly tasting of bias and prejudice in light of news items then and subsequently published.
4. Uncontradicted testimony that Stanisic faces life imprisonment for attempting again to escape Yugoslavian jurisdiction.

And in the subsequent proceedings in the District Court, we have the secret review of administrative files with no right to examine or refute them.

The policy of the court with respect to deportation procedures has been laid down in *Woodby* v. *Immigration Service,* 384 U.S. 904, 17 L. ed. 2d 362, 87 S. Ct. 483 (1966):

"We hold that no deportation order may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true, . . ."

and in a footnote the court continued:

"This standard of proof applies to all deportation cases, regardless of the length of time the alien has resided in this country. . . ."

Clearly, Stanisic has been denied procedural due process.

III.

To the extent that Section 243(h) denies a D-1 crewman in good faith seeking asylum a fair and impartial hearing with right of judicial review, such denial is without justification and is unconstitutional under the due process clause of the Fifth Amendment.

The Government in its brief (Br. 36-38) argues that although under Section 242 Stanisic would have a statutory right to a hearing before a SIO, such right would not spill over by virtue of the statute to include consideration of a Section 243(h) request for asylum. But this is an administrative gloss having no basis in statute and certainly running contrary to the equities of this case. By means of fine lines of reasoning and administrative regulations and determinations the Government seeks to consign Stanisic to the mercy of the District Director. To the extent that the hearing under 8 C.F.R. 253.1(e) is conducted by the District Director it is the contention of Stanisic that it is an unconstitutional hearing. Due process and fair play require a genuinely impartial hearing, conducted with criti-

cal detachment in which the same person is not obliged to serve as both prosecutor and judge. Anything less than this not only undermines administrative fairness but also weakens public confidence in that fairness. *Wong Yang Sung* v. *McGrath, Attorney General,* 339 U.S. 33, 70 S. Ct. 445, 94 L. ed. 616 (1950).

The standards set forth in the Administrative Procedure Act[8] apply to Stanisic, and to the extent that in administrative regulations or interpretation any distinction has been made depriving him of the same rights as apply to any other alien involved in expulsion proceedings, it is a violation of the Administrative Procedure Act and is also unconstitutional.

IV.

Pursuant to the Protocol Relating to the Status of Refugees and the Convention Relating to the Status of Refugees protection is afforded Stanisic as a refugee unwilling to return to his country because of well-founded fear of being persecuted for reasons of religion, membership of a particular social group, or political opinion.

All treaties made under the authority of the United States becomes the supreme law of the land. Article VI, United States Constitution. On November 1, 1968 the United States acceded to the Protocol Relating to the Status of Refugees, approved by the United Nations General Assembly.[9] This protocol referred for definitions to

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[8] 60 Stat. 237, Ch. 324, 5 USCA §1001 et seq.

[9] Protocol Relating to the Status of Refugees, done at New York January 31, 1967; U.S. Dept. of State Treaties and other International Acts Series, No. 6577.

the Convention Relating to the Status of Refugees of July 28, 1951[10] (which had not been acceded to by the United States).

A refugee within the meaning of the Protocol is a person who:

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Stanisic falls within this definition and is therefore entitled to the protection of the Protocol and by reference the Convention. These provisions and safeguards provide that no penalty shall be imposed for illegal entry from a territory where their life or freedom was threatened (Art. 31), a state shall not expel a refugee lawfully in its territory save on grounds of national security or public order, and such expulsion shall be only following a decision pursuant to due process of law (Art. 32), that such refugee shall have a reasonable time within which to seek legal admission into another country (Art. 32), and that no state shall expel or return a refugee to lands where his life or freedom would be threatened on account of his religion, membership of a particular social group or political opinion (Art. 33).

The harsh and unreasonable penalties facing Stanisic in Yugoslavia clearly put him in the category of "refugee"

[10] United Nations Document A/Conf. 2/108.

facing "persecution" if returned. The Government has so far refused to ascertain the probable charges he might face, and the Court of Appeals has sustained the Government (A. 59-61). But by examining Yugoslav law there are the following possibilities:

1. For applying to anybody in a foreign port other than the captain or Yugoslav consul (Yugoslavia 3, II, §12 at A. 47),—fine, confinement, and forfeiture of right to serve at sea (A. 48-49).

2. For unjustified absence from the ship (Yugoslavia 3, II, §14; IV, §§46-48 at A. 47-48),—fine, confinement, and forfeiture of right to serve at sea (A. 47-49).

3. For terminating work without notice or by abandonment (Yugoslavia 1, §32, at A. 50),—a fine (A. 50-51).

4. For unilaterally ceasing to work (Yugoslavia 4, §96 (3), (4)),—compulsory compensation to the labor organization in an amount equal to his anticipated income for the balance of the contract period (A. 51-52).

5. For committing an act aimed at overthrowing the authority of the working people, or undermining the economic foundations of socialism or breaking up the unity of the peoples of Yugoslavia (Criminal Code, Art. 100),—imprisonment of one to fifteen years, and possibly death and confiscation of property (A. 55, 52-53).

6. For any hostile activity against Yugoslavia by establishing contact with a foreign State or organization (Criminal Code, Art. 110),—imprisonment of one to fifteen years (A. 56, 52-53).

7. For escaping abroad for purposes of hostile activity, or creating a group to help escapees (Criminal Code, Art. 110),—imprisonment up to twelve years (A. 56).

8. For carrying on hostile propaganda breaking up the brotherhood and unity of the peoples of Yugoslavia or resistance to the decisions of the executive organs involved in security or defense, or maliciously or untruthfully representing the social-political conditions in Yugoslavia (Criminal Code, Art. 118),—imprisonment up to twelve years (A. 56).

9. For provocating [sic] national, racial or religious intolerance, hatred or discord in Yugoslavia (Criminal Code, Art. 119(1)),—imprisonment up to twelve years (A. 57).

10. For provocating [sic] national, racial or religious intolerance by insulting the citizens or otherwise (Criminal Code, Art. 119(3)),—imprisonment for one to fifteen years (A. 57, 52).

11. For the offense mentioned in item 5, *supra*, if it caused a threat to the security, the economic or military capacity of the State (Criminal Code, Art. 122), —imprisonment of not less than ten years, or death (A. 57-58).

12. For damaging the reputation of Yugoslavia or bringing it into derision (Criminal Code, Art. 174),—imprisonment of not less than three months (A. 58).

The vague language of Yugoslav law permits its arbitrary and extensive interpretation by the courts. Recent news stories from Yugoslavia bear this out. The fact still remains that the United States cannot show that Stanisic can return

without undergoing persecution for his political and religious beliefs. It is extremely doubtful that Stanisic would get fair play, and in view of the limited evidence at the hearing before the District Director (Appendix, pp. 21-28, *infra*) his fear was and is well-founded.

Therefore, by any reasonable applications of treaty law Stanisic should have due process of law, and in the event of unfavorable decision he shall not be returned to any country where he faces persecution. This is part of the supreme law of the land.

Finally, Stanisic cannot pass unnoticed the comment on page 38 of the Government's brief. Stanisic denies that he has been fully heard under the regulations with respect to persecution on account of religion or political opinion; the hearing, such as it was, before a biased and prejudiced District Director dealt only with the question of "physical persecution", although he purported to consider the broader case but failed to do so.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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APPENDIX

SUMMARY OF TESTIMONY IN THE CASES OF VELJKO STANISIC

and

VESELIN VUCINIC

TESTIMONY OF VELJKO STANISIC:

Veljko Stanisic was born in Pelev Brijeg, Montenegro, Yugoslavia, on August 25, 1935. He is unmarried, his father is deceased and his mother is still living. His father died June 23, 1964. Stanisic is of the Orthodox religion.

He attended four years of elementary school in Pelev Brijeg from 1945 to 1948 and then junior high school from 1948 to 1950. After that he went to high school from 1950 to 1955 in Kotor. From 1955 to 1956 he worked, having no money for further education. He was employed in the Post Office in Kotor and, thereafter, he went to an architectural school for seven months in Zagreb. In 1957 he worked as a teller in a bank. Again, he had no money to continue his education so he went into the army from March, 1958 to March, 1959. This was a school for reserve officers. He attained the rank of lieutenant and signed up with the merchant marine telegraph school where he attended from 1959 to 1960. He thereafter became a telegrapher and radio officer on Yugoslav merchant vessels.

Stanisic has several brothers and sisters, all born in Yugoslavia. One brother is a superintendent of a marine school in Kotor. Another is a farmer and a third brother is an army officer with the rank of lieutenant. Another brother is an assistant mechanic and another is attending technical school in Titograd. One sister is a student and two others are married.

Stanisic's father was an assistant to a priest of the Orthodox Church in Pelev Brijeg. He held this job up until World War II and he was removed by the Communists from this position. Thereafter he had his own small acreage which he worked in order to live.

Stanisic testified that his father was also a city clerk in Peley Brijeg for thirty years but when he was terminated by the Communists because of his anti-Communist views he received no pension.

Stanisic never belonged to any organizations, even the seamen's union, although dues are deducted from wages.

On December 23, 1964, Stanisic was a member of the crew of the Yugoslavian motor vessel *Sumadija* when it arrived at Coos Bay, Oregon, after a voyage from Vancouver, Canada. On January 4 he left the ship and called his cousin, Mike Toskovich in Eugene, who came to Coos Bay and took Stanisic and his fellow crewman, Veselin Vucinic, to Eugene. They stayed overnight and on January 6 Toskovich brought them to Portland to the Immigration Office.

The reason for leaving the ship was that he felt that the Communists were his enemies and that he did not believe in Communism. He stated that aboard the ship the Communist Party factions show seamen who are not Communist a rough time. But he had been ridiculed and accused of being a sympathizer with the Western Powers. If he had been returned to the *Sumadija* at the time of the hearing, he felt that he would be subject to verbal persecution aboard the ship although they would not kill him because they needed his services.

Stanisic stated that the government had closed all the churches in Montenegro as far as he knew, including the one in his hometown. He went to church in America whenever he could. He stated that most of the Catholic Churches are open in Yugoslavia but 80 per cent of the Orthodox Churches are closed.

Stanisic stated that in 1957 he tried to escape from Yugoslavia with a friend and attempted to reach Trieste. They were caught by some fishermen and returned and they were told that if they were ever caught again they would be sentenced to prison for life.

Stanisic stated that if he were returned to Yugoslavia he would be tried both as a deserter of the ship and because

he was an anti-Communist. He testified that he did not know whether they would just kill him or sentence him to life in prison. If he were returned, he would have to give up his profession and there would be no life for him in Yugoslavia.

Many other members of Stanisic's family have been persecuted and killed by the Communists. When he was six years old, Stanisic saw the remains of an uncle who had been killed by the Communist in Pelev Brijeg.

Stanisic's father had been beaten by the Communists and they had ransacked his house after World War II. The Communists had also harassed his brother, Blazo. On one occasion, the Communists wanted to shoot Stanisic's father but an old friend in authority interceded for him. Over thirty cousins and uncles were killed by the Communists during or after the war.

Stanisic said he had been raised in the Orthodox Church by his father who was a very religious man but since the Communists took over they had used the churches to stable cattle. Stanisic has never been convicted of any crimes in Yugoslavia.

The reason that his family had been persecuted by the Communists was that they belonged to the Chetnik group of anti-Communist partisans who were loyal to the king.

Stanisic tried to make it clear that if he were returned to Yugoslavia he would not only be punished for deserting ship but also they would take into account that he is anti-Communist, religious and that he might be an American spy and that he would be punished worse because of these factors than if he had only jumped ship.

TESTIMONY OF MR. "X":

This witness requested that his name be withheld because of fear of persecution of some of his family in Yugoslavia, if his testimony were made public.

The witness is 69 years old and is an American citizen having been naturalized in 1939. He was born in Yugo-

slavia near the town of Titograd which was then known as Podgroritza, in Montenegro. He came to the United States in 1914. He returned to visit Yugoslavia in 1920, 1929 and a third time from 1958 to 1963, when he went to try to help his parents whose property had been confiscated by the Communists. During that visit he was jailed for ten months on alleged black-market activities. During his time in jail, he was ill but the authorities refused him medical attention. While in jail he was acquainted with prisoners who were there for political reasons and he saw that they had been beaten, had teeth knocked out and had been tortured. Also, some political prisoners were killed in jail. While he could not specifically state what would happen to Stanisic and Vucinic if they were returned, he stated "If they go back it would be better if they die right here before they send them back." (Tr. 41).

The witness was acquainted with the Stanisic and Vucinic families in Montenegro. He considered them some of the best people in Montenegro and they were well thought of under the monarchy and were reputed to be anti-Communist. They had not faired well under the Communists and he understood that the Vucinic land had been taken over by the Communists.

He confirmed the attitude of the government as testified to by Stanisic with respect to the Orthodox Church. He was sure that Vucinic and Stanisic would be badly treated in jail if they were returned to Yugoslavia:

> "They would put them in jail and they do with them whatever they want. They club them. They break their arms. They break their ribs. They torture all kinds of —I never hear anybody do that before in all my life. They have no soul. They have no heart. They don't feel sorry for nobody, you know. They kill man just like fly." (Tr. 45)

TESTIMONY OF RADE DZANKICH:

Rade Dzankich testified that he presently lives in Eugene, Oregon and is employed by a logging company. He has

been in the United States since September 27, 1963. He was born February 16, 1929, in the town of Crnci near Titograd in Montenegro, Yugoslavia. He was raised and went to school in this area. He was paroled into the United States in New York September 27, 1963, pursuant to Section I of the Act of July 14, 1960.

He lived in Yugoslavia until 1949. At that time he belonged to a youth movement that was against the Communist government and he made his escape. He lived three months in the woods and tried to get across Albania where he was caught by the Albanian government. He was sent to jail in Albania until September, 1956. He then escaped and went back to Yugoslavia and tried to get to either Austria or Italy but was caught and spent three years in jail. He was in jail at Titograd, Kotor and Spuz. These areas are in Montenegro. He was sentenced because he had been a member of an anti-Communist organization known as the "R. O. Youths". This group had passed out literature against the government and were trying to obtain help from people who were hiding in the woods from the government. Fourteen other people were arrested with him and were lodged in jail.

During his imprisonment from 1956 to 1959, for two and one-half months he was in solitary confinement. He was beaten many times. They also starved him. He was tortured, in addition, by being forced to look at a fight until he passed out. He testified that other political prisoners are treated the same way in Yugoslavia.

He was acquainted with the Stanisic and Vucinic families in the Titograd area and said they were known to be anti-Communist and in favor of the Chetniks and the old government.

He said that the Communists had put Chetniks in work camps, jail and executed them, including his brother who was a Chetnik.

When his brother was alive and in the Chetnik army, his mother had taken him some food and clothes and the Communists had caught her and knocked out two of her teeth.

Dzankich confirmed prior testimony that the Communists had closed the Orthodox Churches and monasteries in the Titograd area and used them for stables. He said the Communists preach the philosophy that there is no God and no religion. He said that if Vucinic and Stanisic, being anti-Communist and religious, are now returned to Yugoslavia " . . . they would be better off if they were killed by the American government than be sent back. If they go back they will be tortured, punished." (Tr. 56).

Dzankich said that they would be treated differently from ordinary deserting seamen because of their political and religious beliefs. If they had been strong Communist Party members they would be forgiven. People who are members of the Communist Party if they commit a crime they are sentenced to jail, but their penalty is less severe than that which is invoked upon people who are anti-Communist, and are sentenced for the same crime.

Dzankich stated that in part his opinion as to what would happen to Stanisic and Vucinic was based upon what had been told him by a Yugoslav seaman who jumped ship in Italy, whom he had known.

He also stated that there was no publicity or public information released as to what is done with political prisoners.

Note: The Government offered no witnesses or evidence.

TESTIMONY OF VESELIN VUCINIC:

Veselin Vucinic was born February 1, 1937, in the village of Rogami in Montenegro, Yugoslavia. His mother is deceased and his father is 62 years old, lives in Rogami and is a retired forester, on a pension. He has three brothers who also live in Yugoslavia. One is an electrician, another is a student in Zagreb in a technical school, and the third is only 14 years old and does not work.

Vucinic has attended elementary school, junior high school and a technical school where he studied to be a cabinet maker, all schools being in Titograd in Montenegro.

He worked carrying lumber as a common laborer for about three years when he was 15 or 16 years old and as a cabinet maker for about a year for the government. He worked for his father in the woods for a month, in a mill for about two months, and then finally went into the military service.

He was drafted into the Yugoslav navy from March 15, 1957 to March 17, 1960, and served as a sailor. Finally, in 1961 he obtained a job with the Yugoslav Ocean Shipping Company as a sailor and has been working for them ever since.

Vucinic has a cousin in Buffalo, New York, whom he has never seen and he does not know his name or address. As far as he knows, he does not have any other relatives outside Yugoslavia.

Vucinic never belonged to any organizations, clubs or unions but he paid his dues to the seamen's union.

Like Stanisic, he arrived in Coos Bay, December 23, 1964, on the *M/S Sumadija* and on January 4, 1965, he went with Veljko Stanisic and his cousin to the Immigration Office in Portland requesting political asylum.

Vucinic states that if he went back to Yugoslavia " . . . they would torture me and the humility I would suffer would be unbearable. When I get there they would try me and I would be put into a jail cell where there is water and tortured and in due time be killed. I would rather be killed here than go back to await what is waiting for me." (Tr. 9).

This treatment he ascribed to his being anti-Communist. He stated that he had been anti-Communist ever since he had a sense of reasoning.

Vucinic stated that it is his desire to live in the United States and he has wanted to do so ever since he went to school and heard of freedom.

He stated that because he had been anti-Communist he received $6.00 a month less than the other ordinary seamen on the *Sumadija*.

In addition, because of his anti-Communism he suffered humiliation and abuse on the vessel.

Vucinic and Stanisic assisted a crewman on the *Sumadija* to desert the ship in British Columbia, Canada, shortly before leaving the vessel in Coos Bay, Oregon. Vucinic gave him $23.00. The deserting seaman was Ilja Glogovach, the Third Officer of the *Sumadija*.

Vucinic stated that he was of the Orthodox religion, and like Stanisic, he testified that the churches in his part of the country have been closed, most of them destroyed and used as stables. Vucinic testified that his father had been locked up in jail by the Communists and sentenced to hard labor. That after he was released he petitioned the government and a pension was granted about a year and one-half ago. The government also restored his citizenship which had been taken away when he was jailed from 1945 to 1948 or 1949.

His health now is very poor, his eyesight is also bad, as a result of the hard physical labor required of him in jail. He is not allowed to come aboard the ship to visit Vucinic when he is in port and the Communist authorities took away his father's land and house.

When Vucinic's father's land was confiscated by the government they reimbursed him 119,000 dinars (750 dinars to a dollar). Vucinic said that the property was worth much more than that.

Vucinic's younger brother was deprived of his money by the government for schooling because he was not a Communist.

Like Stanisic, Vucinic's family suffered at the hands of the Communists and at least one cousin was executed by the Communists because he tried to leave the country in 1945.

Vucinic says that anti-Communist in Yugoslavia or people who oppose Tito sometimes are killed or they disappear. Also, they may be tortured and forced to say things they did not say.

When Vucinic left the ship he went to stay with Stanisic's cousin, Mike Toskovich in Eugene, Oregon. He had no other place to go and that is why he did not jump ship in some other country.

CONVENTION RELATING TO THE STATUS OF REFUGEES

The Convention of July 28, 1951, Relating to the Status of Refugees (U.N. Document A/Conf. 2/108) provides in part as follows:

Article 16

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exception from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Article 31

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a

reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country.

APPENDIX I

Protocol Relating to the Status of Refugees

List of Parties to the Protocol

Algeria	Guinea	Senegal
Argentina	Holy See	Sweden
Cameroon	Iceland	Switzerland
Central African Republic	Ireland	Tanzania
Denmark	Israel	Tunisia
Finland	Liechtenstein	Turkey
Gambia	Malta	United Kingdom
Ghana	Nigeria	United States of America
Greece	Norway	Yugoslavia

TOTAL: 27

APPENDIX II

Protocol Relating to the Status of Refugees

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I

General Provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and * * *" and the words "* * * as a result of such events" in article 1A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1B(1)(a) of the Convention, shall, unless extended under article 1B(2) thereof, apply also under the present Protocol.

Article II

Cooperation of the National Authorities with the United Nations

1. The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs

of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate forms, concerning:

(a) The condition of refugees;

(b) The implementation of the present Protocol;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III

Information on National Legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

Settlement of Disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the

deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

Federal Clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

Reservations and Declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by State Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declaration made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

Entry into Force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

Denunciation

1. Any State Party hereto may denounce this Protocol at anytime by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating thereto.

Article XI

Deposit in the Archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

In accordance with article XI of the Protocol, we have appended our signatures this thirty-first day of January one thousand nine hundred and sixty-seven.

U THANT
Secretary-General of the United Nations

A. R. PAZHWAK
President of the General Assembly of the United Nations

EXCERPT FROM THE OREGONIAN

(See opposite) ☞

THE OREGONIAN, SATURDAY, SEPTEMBER 24, 1966

Yugoslav Writer Sentenced To One Year On Charge Of Spreading False Information

ZADAR, Yugoslavia (AP) — A Yugoslav court Friday sentenced Mihajlo Mihajlov, defiant foe of single-party communism, to 12 months in prison.

The soft-spoken, 32-year-old former university lecturer was convicted of spreading false information.

He had pleaded innocent and told the court Thursday:

"I deeply believe that what I stated in my writings is the truth. I cannot consider socialism a society in which only 6 to 7 per cent have all rights and the others none."

Mihajlov could have been sentenced to two years and five months in prison including a five-month sentence against him which was suspended last year.

A three-judge panel listened to 6½ hours of testimony and argument Thursday, then postponed its verdict for two hours Friday for further consultations.

A crowd of more than 100 persons waited in the corridor in front of the courtroom, a Yugoslav working for an American newsreel company was slapped twice in the face, an Italian TV cameraman was spat on and an Italian newsman was pushed around.

Mihajlov was not in the court to hear his sentence. He had been in the corridor earlier but left after the postponement was announced. His attorney said he did not know why he had not returned.

Guilt Found

Mihajlov entered the courtroom after the judge had finished reading the verdict and sentence, saying no one had summoned him after the recess. He gave immediate notice of appeal and will remain free until that is acted upon.

Despite a warning by the presiding judge against anti-Mihajlov actions persons in the courtroom shouted "Out with him from our city!" "We do not want him!" "Expel him to some foreign country!".

The court found Mihajlov guilty on one count of the indictment, spreading of false information aimed at inciting displeasure and provoking dissatisfaction among the population. For that it sentenced him to nine months. To this the court added the earlier five-month sentence.

MIHAJLO MIHAJLOV

The court decided that of the total of 14 months, Mihajlov was to serve 12 months. But it credited him with the 62 days he spent in jail in April 1965 and last August, which meant that he will actually spend 10 months in jail.

The sentence included a ban against Mihajlov taking part in public activities or publishing for one year. The court also ordered confiscation of 2,000 new dinars ($160), earnings from articles cited in the indictment.

Judge Sime Fabulic, who with two assessors conducted the trial, pronounced Mihajlov innocent on the second count of the indictment — dissemination of banned printed material.

The state prosecutor had charged that Mihajlov wrote and distributed articles containing untruths "to provoke distrust . . . (and) to jeopardize the public order and peace."

Article Banned

He also contended Mihajlov permitted a magazine run by Polish immigrants in Paris to publish his "Moscow Summer 1964," article critical of the Soviet Union. It was banned in Yugoslavia last year.

Mihajlov maintains the Communist Party unjustly monopolizes all aspects of life in Yugoslavia and stifles freedom. He tried unsuccessfully to start an opposition party last month.

He argued that the Yugoslav press and Communist officials have written more strongly than he about conditions in Yugoslavia since the party purge in July.

"When they do it, it is considered to be criticism," he said. "When I do it, it is an offense of the criminal law."

The state prosecutor replied that Mihajlov's demand for a multiparty system was a Trojan horse for the restoration of capitalism.